

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **Region IX**

3 In The Matter Of:

4 Selma Pressure Treating Company Site

5 Gerald D. Petery, Selma Leasing Co.,
6 Mary Ann Schuessler, Selma Pressure
7 Treating Company,

8 Respondents

 U.S. EPA
 Docket No.91-20

9 Proceeding Under Section 106(a) of the
10 Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980,
 as amended (42 U.S.C. § 9606(a))

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14 **ADMINISTRATIVE ORDER**
15 **FOR REMEDIAL DESIGN AND REMEDIAL ACTION**
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ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

This Order directs Respondents to perform a remedial design for the remedy described in the Record of Decision for the Selma Pressure Treating Co. Site ("SPTC" or "the Site"), dated September 24, 1988, and to implement the design by performing a remedial action. This Order is issued to Respondents by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B.

II. FINDINGS OF FACT

A. Site Description

1. The Selma Pressure Treating Company Site consists of a wood treating facility and adjacent vineyards located on a parcel of approximately eighteen (18) acres on Dockery Avenue, Selma, California. The Site is located about 15 miles south of Fresno and adjacent to the southern city limits of Selma. Selma Pressure Treating Company conducted wood treating operations at the Site from 1942 until September, 1981.

2. The wood-preserving process originally employed at the Site involved dipping the wood into a mixture of pentachloro-

1 phenol and oil, and then drying the wood in open racks to let the
2 excess liquid drip off. In 1965 SPTC built a new facility and
3 converted to a pressure treating process which consisted of
4 conditioning the wood and then impregnating it with chemical
5 preservatives.

6 3. Prior to 1982, discharge practices included: (1) runoff
7 into drainage and percolation ditches, (2) drainage into dry
8 wells, (3) spillage onto open ground, (4) placement into an
9 unlined pond and sludge pit, and (5) discharges to the adjacent
10 vineyards. These wastes were generated from spent retort fluids
11 and sludges.

12 4. Known chemical preservatives used at the Site to date
13 include the following: fluor-chromium-arsenate-phenol (1966-
14 1973); chromated copper arsenate (1973-present); pentachloro-
15 phenol (1970-present); copper-8-quinolinolate (1977-1980); LST
16 concentrate (1970-1979); Woodtox 140 RTU (1974 only); heavy oil
17 penta solution (1977 only).

18 5. Zoned for heavy industrial use, the SPTC Site is located
19 in a transition zone between agricultural, residential, and
20 industrial areas. Situated in the center of the San Joaquin
21 Valley, the area contains many vineyards, and Selma is labeled
22 the "Raisin Capital of the World". Urban residential areas lie
23 to the north, and scattered suburban dwellings surround the site.
24 Approximately 12 residences and/or businesses are located within
25 1/4 mile of the SPT Site.

26 6. Currently, a wood treating facility, Selma Treating
27 Company, is operating at the SPTC Site. Selma Treating Company
28 is owned by Saw Mill Properties, Inc. Selma Treating Company

1 operations are regulated by state Waste Discharge Requirements,
2 Order No. 78-171, which precludes discharges to areas having
3 hydraulic continuity with groundwater. At the time Selma
4 Treating Company began operation, the Regional Water Quality
5 Control Board (RWQCB) required installation of drip pads, berms
6 around the site, and runoff containment to prevent ongoing
7 contamination.

8 7. The Consolidated Irrigation District provides the
9 majority of the irrigation supply in the area. The surface water
10 irrigation supply is supplemented by groundwater resources in the
11 vicinity of the Site. The groundwater resources also supply the
12 necessary domestic water for the surrounding communities and the
13 scattered county residences. The regional groundwater gradient
14 in the vicinity of the Site is to the southwest. The groundwater
15 resources in the area of the SPTC Site have been classified by
16 EPA as a Sole-Source Aquifer under the Safe Drinking Water Act,
17 42 U.S.C. § 1424(e). Under EPA's Groundwater Protection Strategy
18 (1984), the aquifer in the SPTC Site area has been classified as
19 a Class II A "current drinking water source with other beneficial
20 uses".

21 8. No other significant natural resources were found at the
22 Site, such as federal or state rare, threatened, or endangered
23 species, or wetlands. The Site is not included on the National
24 Register of Historic Places under the Historic Preservation Act
25 of 1966, 16 U.S.C. § 470 et seq.

26 B. Regulatory and Enforcement History

27 1. In 1971, the RWQCB established waste discharge
28 requirements for the SPTC facility. These requirements govern

1 the discharge of wood perserving chemical wastes and prohibit any
2 discharge of wastes that could threaten groundwater quality.

3 2. The RWQCB monitored SPTC's compliance with the waste
4 discharge requirements. In 1976 operational spillage of
5 pentachlorophenol was observed. In 1976 and 1978, the RWQCB
6 requested Operational Reports on SPTC's leak detection and
7 contamination prevention systems.

8 3. In January, 1981 the RWQCB, the California Department of
9 Health Services (DHS), and EPA conducted an inspection of the
10 SPTC facility. The Site visit indicated that SPTC had not fully
11 observed the waste discharge requirements for the facility.

12 4. Soil, surface water and groundwater samples were taken
13 by the state agencies to investigate the contamination. In 1981,
14 the RWQCB issued a Cleanup and Abatement Order to SPTC, requiring
15 a geotechnical investigation and timetable for cleanup of the
16 Site.

17 5. When SPTC went into bankruptcy in 1981, the landowner,
18 Selma Leasing Company agreed to perform the investigation
19 required by the RWQCB. In addition, EPA and DHS performed
20 sampling in early 1982, which revealed soil and groundwater
21 contamination.

22 6. In 1983, the agencies determined the geotechnical
23 investigation prepared by Selma Leasing Company to be
24 insufficient for determining the extent of the contamination.

25 7. In September of 1983, DHS issued an Order/Settlement
26 Agreement and Schedule of Compliance to SPTC to enforce
27 investigation and cleanup efforts at the facility. Efforts to
28 progress with the investigation failed in the Spring of 1984. At

1 that time DHS referred the Site to EPA for further action and the
2 RWQCB filed a complaint against SPTC operators with the
3 California Attorney General's Office.

4 8. In September, 1983, pursuant to Section 105 of CERCLA,
5 42 U.S.C. § 9605, EPA placed the SPTC Site on the National
6 Priorities List, set forth at 40 C.F.R. Part 300.

7 9. On March 4, 1985 EPA issued an Administrative Order,
8 pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to
9 Respondents Gerald Petery, Mary Ann Schuessler and Selma Leasing
10 Company to conduct the Remedial Investigation, Feasibility Study
11 (RI/FS) at the SPTC Site. The Respondents did not comply with
12 the Order and were not involved in the development of the RI/FS.

13 10. Respondent Gerald D. Petery was the owner and operator
14 of the SPTC facility from 1961 until 1971. In 1971, Gerald D.
15 Petery organized as its sole owner, Respondent Selma Leasing
16 Company, which, from that time until the present, owns the
17 property on which SPTC operated. In 1977, Gerald D. Petery sold
18 his interest in SPTC to Respondent Mary Ann Schuessler (formerly
19 Petery). During the time that Respondents Petery and Selma
20 Leasing Company owned the property encompassed by the Site, or
21 operated the facility, hazardous substances, including some or
22 all of those described in this Section, were disposed of at the
23 Site.

24 11. Respondent Mary Ann Schuessler operated the SPTC
25 facility from 1970 until its liquidation in bankruptcy in 1981.
26 During that time hazardous substances, including some or all of
27 those described in this Section, were disposed of at the Site.

28 The respondents identified in this, and the preceding

1 paragraph are collectively referred to as "Respondents."

2 13. EPA undertook a Remedial Investigation ("RI") for the
3 Site, pursuant to CERCLA and the National Contingency Plan, 40
4 C.F.R. Part 300.

5 14. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,
6 EPA published notice of the completion of the Feasibility Study
7 Report ("FS"). In June 1988, opportunity was provided for public
8 comment on the proposed remedial action when the FS Report and
9 the proposed plan for remedial action were released to the
10 public.

11 15. The decision by EPA on the remedial action to be
12 implemented at the Site is embodied in a final Record of Decision
13 ("ROD"), executed on September 24, 1988, on which the State had a
14 reasonable opportunity to review and comment and on which the
15 State has given its concurrence. The Record of Decision is
16 attached to this Order as Appendix 1 and is incorporated by
17 reference. The Record of Decision is supported by an
18 administrative record that contains the documents and information
19 upon which EPA based the selection of the response action.

20 16. In May, 1990, Special Notice letters for performance of
21 the RD/RA were issued under CERCLA Section 122(e)(2) to Gerald
22 Petery, Selma Leasing Co., Mary Ann Schuessler, SPTC and First
23 Interstate Bank (the "Bank"). After consideration of the replies
24 to Special Notice, EPA determined that it did not receive a "good
25 faith" offer sufficient to engage in settlement negotiations
26 pursuant to CERCLA Section 122(e), 42 U.S.C. § 9622(e).

27 C. Site Contamination

28 1. The Site-related contaminants of concern found in sur-

1 face and subsurface soils include chromium, arsenic, copper,
2 dioxin/furan, pentachlorophenol (PCP), and trichlorophenols
3 (TCP). Site-related chemicals detected in groundwater are
4 arsenic, chromium, copper, pentachlorophenol, and two dioxin
5 congeners. However, only chromium exceeds the clean-up goals for
6 groundwater.

7 2. Contaminated soils resulting from SPTC's operations are
8 present both on and off site, and are easily accessible to direct
9 contact by humans and wildlife. In addition, these contaminated
10 soils are situated in a groundwater recharge zone and overlie a
11 Sole Source Aquifer serving the Selma population (more than
12 11,000 people). Hazardous substances used by SPTC have already
13 been detected in this aquifer. In the case of chromium, con-
14 tamination has been detected in the shallow zone of this aquifer
15 in concentrations more than 100 times the EPA-established Maximum
16 Contaminant Level (MCL) for chromium in drinking water (.05
17 milligrams per liter). Therefore, actual releases of hazardous
18 substances from the SPTC Site, and threatened future releases
19 from contaminants present in land once occupied by SPTC, present
20 an imminent and substantial endangerment to public health or
21 welfare and the environment.

22 3. Pursuant to the ROD, the selected remedies are for
23 Remediation of the Soil and Remediation of the Groundwater. The
24 major components of the Remedial Action are as follows:

25 a) Design and implementation of the contaminated
26 groundwater extraction and treatment system, and reinjection or
27 off-site use of the treated effluent as appropriate.

28 b) Excavation, stabilization and solidification

1 treatment, and impoundment of contaminated soil. Treated soil
2 will be covered with a cap that will meet the RCRA closure
3 requirements under 40 C.F.R. Section 264, Subparts F, G and N.

4 c) Development and implementation of long term
5 institutional controls and monitoring.

6 4. The function of soil fixation, as treatment, is to
7 create a monolithic soil matrix which inhibits leaching, using a
8 stabilization and solidification process. The RCRA Cap, placed
9 on top of the fixed soils will provide additional protection from
10 surface disturbance and surface water infiltration. For
11 groundwater treatment, a conventional precipitation, coagulation,
12 and flocculation process will remove chromium to the MCL level.

13 5. Until remediation of groundwater is achieved,
14 institutional controls over the use of the contaminated portions
15 of the aquifer will be required. Long-term institutional
16 controls include access restrictions to capped and fixed areas,
17 and long-term access for monitoring and maintenance activities.

18 III. CONCLUSIONS OF LAW AND DETERMINATIONS

19 A. The SPTC Site is a "facility" as defined in Section 101(9)
20 of CERCLA, 42 U.S.C. § 9601(9).

21 B. Respondents are "persons" as defined in Section 101(21) of
22 CERCLA, 42 U.S.C. § 9601(21).

23 C. Respondents are "liable parties" as defined in Section
24 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are subject to this
25 Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

26 D. The substances listed in paragraph II(C)(1) are found at the
27 Site and are "hazardous substances" as defined in Section 101(14)
28 of CERCLA, 42 U.S.C. § 9601(14).

1 E. The past disposal and migration of hazardous substances from
2 the Site constitute a "release" as defined in Section 101(22) of
3 CERCLA, 42 U.S.C. § 9601(22).

4 F. The potential for future migration of hazardous substances
5 from the Site poses a threat of a "release" as defined in Section
6 101(22) of CERCLA, 42 U.S.C. § 9601(22).

7 G. The release and threat of release of one or more hazardous
8 substances from the facility presents an imminent and substantial
9 endangerment to the public health or welfare or the environment.

10 The contamination and endangerment at this Site constitute an
11 indivisible injury. The actions required by this Order are
12 necessary to protect the public health, welfare, and the
13 environment.

14 IV. NOTICE TO THE STATE

15 On July 22, 1991, prior to issuing this Order, EPA notified
16 the State of California, Department of Health Services, that EPA
17 would be issuing this Order.

18 V. ORDER

19 Based on the foregoing, Respondents are hereby ordered,
20 jointly and severally, to comply with the following provisions,
21 including but not limited to all attachments to this Order, all
22 documents incorporated by reference into this Order, and all
23 schedules and deadlines in this Order, attached to this Order, or
24 incorporated by reference into this Order:

25 VI. DEFINITIONS

26 Unless otherwise expressly provided herein, terms used in
27 this Order which are defined in CERCLA or in regulations
28 promulgated under CERCLA shall have the meaning assigned to them

1 in the statute or its implementing regulations. Whenever terms
2 listed below are used in this Order or in the documents attached
3 to this Order or incorporated by reference into this Order, the
4 following definitions shall apply:

5 "CERCLA" shall mean the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980, as amended, 42
7 U.S.C. §§ 9601 et seq.

8 "Clean-up Standard(s)" shall mean the criteria respecting
9 the degree of clean-up to be achieved in the groundwater and soil
10 at the Site. These criteria shall include those identified in
11 the ROD, those established by the applicable or relevant and
12 appropriate requirements ("ARARs") identified in the ROD, and
13 those set forth in Section IX (Work To Be Performed), Paragraph
14 B(16).

15 "Day" shall mean a calendar day unless expressly stated to
16 be a working day. "Working day" shall mean a day other than a
17 Saturday, Sunday, or Federal holiday. In computing any period of
18 time under this Order, where the last day would fall on a
19 Saturday, Sunday, or Federal holiday, the period shall run until
20 the end of the next working day.

21 "EPA" shall mean the United States Environmental Protection
22 Agency.

23 "National Contingency Plan" or "NCP" shall mean the National
24 Contingency Plan promulgated pursuant to Section 105 of CERCLA,
25 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any
26 amendments thereto.

27 "Operation and Maintenance" or "O&M" shall mean all
28 activities required under the Operation and Maintenance Plan

1 developed by Respondents pursuant to this Order and Section IX,
2 (Work To Be Performed) and approved by EPA.

3 "Oversight" shall mean the United States' and/or its
4 contractors' inspection of remedial work and all other actions
5 taken to verify the adequacy of all activities undertaken and
6 reports submitted by Respondents as required under the terms of
7 this Order.

8 "Performance Standards" shall mean those cleanup standards,
9 standards of control, and other substantive requirements,
10 criteria or limitations, identified in the Record of Decision and
11 Section IX (Work To Be Performed), that the Remedial Action and
12 Work required by this Order must attain and maintain.

13 "Project Plan" shall mean the workplan developed by the
14 Respondents and approved by EPA which details the work to be
15 conducted pursuant to this Order.

16 "Record of Decision" or "ROD" shall mean the EPA Record of
17 Decision relating to the Site, signed on September, 24, 1988, by
18 the Regional Administrator, EPA Region 9, and all attachments
19 thereto.

20 "Remedial Action" or "RA" shall mean those activities, ex-
21 cept for Operation and Maintenance, to be undertaken by Respon-
22 dents to implement the final plans and specifications submitted
23 by Respondents pursuant to the Remedial Design Project Plan
24 approved by EPA, including any additional activities required
25 under Sections IX, X, XI, XII, and XXI of this Order.

26 "Remedial Design" or "RD" shall mean those activities to be
27 undertaken by Respondents to develop the final plans and
28 specifications for the Remedial Action pursuant to the Remedial

1 Design Project Plan and this Order.

2 "Response Costs" shall mean all costs including,
3 administrative, enforcement, removal, investigative and remedial
4 or other direct and indirect costs and accrued interest thereon,
5 incurred by the United States pursuant to CERCLA. Response costs
6 include but are not limited to oversight costs, which are the
7 costs of overseeing the Work, such as the costs of reviewing or
8 developing plans, reports and other items pursuant to this Order
9 and costs associated with verifying the Work.

10 "Section" shall mean a portion of this Order identified by a
11 roman numeral and includes one or more paragraphs.

12 "Selma Pressure Treating Company (SPTC) Superfund Site, or
13 the "Site" shall mean the property located at 1735 Dockery
14 Avenue, Selma, California including all areas where Waste
15 Materials were disposed or have come to be located.

16 "State" shall mean the State of California.

17 "United States" shall mean the United States of America.

18 "Work" shall mean all activities Respondents are required to
19 perform under this Order, including Remedial Design, Remedial
20 Action, Operation and Maintenance, and any activities required to
21 be undertaken pursuant to Sections IX (Work To Be Performed)
22 through XXII (Administrative Record) of this Order.

23 "Waste Material" shall mean (1) any "hazardous substance"
24 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
25 "pollutant" or "contaminant" under Section 101(33); or any
26 "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C.
27 § 6903(5).
28

1 VII. NOTICE OF INTENT TO COMPLY

2 Respondents shall provide, not later than five (5) days
3 after the effective date of this Order, written notice to EPA's
4 Remedial Project Manager (RPM) stating whether they will comply
5 with the terms of this Order. If Respondents do not unequivoco-
6 cally commit to perform the RD and RA as provided by this Order,
7 they shall be deemed to have violated this Order and to have
8 failed or refused to comply with this Order. Respondents' writ-
9 ten notice shall describe, using facts that exist on or prior to
10 the effective date of this Order, any "sufficient cause" defenses
11 asserted by Respondents under Sections 106(b) and 107(c)(3) of
12 CERCLA, 42 U.S.C. §§ 9606(b), 9607(c)(3). The absence of a
13 response by EPA to the notice required by this paragraph shall
14 not be deemed to be acceptance of Respondents' assertions.

15 VIII. PARTIES BOUND

16 A. This Order shall apply to and be binding upon each
17 Respondent identified in Section II.B.10 and 11, its directors,
18 officers, employees, agents, successors, and assigns.
19 Respondents are jointly and severally responsible for carrying
20 out all activities required by this Order. No change in the
21 ownership, corporate status, or other control of any Respondent
22 shall alter any of the Respondents' responsibilities under this
23 Order.

24 B. Respondents shall provide a copy of this Order to any
25 prospective owners or successors before a controlling interest in
26 Respondents' assets, property rights, or stock are transferred to
27 the prospective owner or successor. Respondents shall provide a
28 copy of this Order to each contractor, sub-contractor,

1 laboratory, or consultant retained to perform any Work under this
2 Order, within five days after the effective date of this Order or
3 on the date such services are retained, whichever date occurs
4 later. Respondents shall also provide a copy of this Order to
5 each person representing any Respondent with respect to the Site
6 or the Work and shall condition all contracts and subcontracts
7 entered into hereunder upon performance of the Work in conformity
8 with the terms of this Order. With regard to the activities un-
9 dertaken pursuant to this Order, each contractor and subcontrac-
10 tor shall be deemed to be related by contract to the Respondents
11 within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
12 § 9607(b)(3). Notwithstanding the terms of any contract,
13 Respondents are responsible for compliance with this Order and
14 for ensuring that their contractors, subcontractors and agents
15 comply with this Order, and perform any Work in accordance with
16 this Order.

17 C. Within five (5) days after the effective date of this
18 Order each Respondent that owns real property comprising all or
19 part of the Site shall record a copy or copies of this Order in
20 the appropriate governmental office where land ownership and
21 transfer records are filed or recorded. Respondents shall,
22 within 15 days after the effective date of this Order, send
23 notice of such recording and indexing to EPA.

24 D. Not later than sixty (60) days prior to any transfer of
25 any real property interest in any property included within the
26 Site, Respondents shall submit a true copy of the transfer
27 documents to EPA, and shall identify the transferee by name,
28 principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

A. General Obligations

1. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

2. Notwithstanding any approvals which may be granted by the United States or other governmental entities, Respondents shall assume any and all liability arising from or relating to their contractors, subcontractors, or any other person acting on their behalf in the performance of the Remedial Action or their failure to perform fully or complete the Remedial Action.

3. Respondents shall appoint a representative ("Project Coordinator") designated by them to act on their behalf to execute the Remedial Action. Within 5 days after the effective date of this Order, Respondents shall notify EPA in writing of the name and qualifications of the Project Manager, including the support entities and staff, proposed to be used in carrying out Work under this Order. If at any time Respondents propose to use a different Project Manager, Respondents shall notify EPA and shall obtain approval from EPA before the new Project Manager performs any Work under this Order.

4. EPA will review Respondents' selection of a Project Manager according to the terms of this paragraph. If EPA disapproves of the selection of the Project Manager, Respondents shall submit to EPA within 30 days after receipt of EPA's

1 disapproval of the Project Manager previously selected, a list of
2 Project Managers, including primary support entities and staff,
3 that would be acceptable to Respondents. EPA will thereafter
4 provide notice to Respondents of the names of the Project
5 Managers that are acceptable to EPA. Respondents may then select
6 any approved Project Manager from that list and shall notify EPA
7 of the name of the Project Manager selected within twenty-one
8 (21) days of EPA's designation of approved Project Manager.

9 5. While Respondents may collect, stage, and secure
10 materials on-site, they shall not treat and redeposit material
11 back into the Site without the presence and approval of EPA or
12 EPA's designated oversight personnel.

13 6. Respondents shall dispose of any materials taken off-
14 site in compliance with the EPA's Revised Procedures for Im-
15 plementating Off-Site Response Actions ("Offsite Policy"). (EPA
16 OSWER Directive 9834.11, November 13, 1987) and any amendments
17 thereto.

18 7. Respondents shall submit all reports (daily, weekly,
19 monthly, etc.) prepared by their contractors and subcontractors
20 to EPA and EPA's designated oversight personnel, according to the
21 schedules set forth in this Order.

22 8. Respondents shall sample groundwater monitoring wells
23 on a quarterly basis (in the months of March, June, September,
24 and December) consistent with Section IX.B.7 (Quality Assurance/
25 Quality Control) and Section IX.B.4 (Sampling and Analysis Plan).
26 Samples shall be analyzed for total chromium, hexavalent
27 chromium, copper, arsenic and pentachlorophenol (PCP) using EPA
28 methods 7191, 7196, 220.1, 7061 and 8040, respectively.

1 9. Respondents shall submit a Quarterly Groundwater
2 Monitoring Report within sixty (60) days of each quarterly
3 sampling event. The Quarterly Report shall contain, but not be
4 limited to:

5 (a) An analytical data summary and short discussion;

6 (b) Regional maps of well locations and:

7 (i) water surface elevations and contours,

8 (ii) concentration levels and contours for

9 chromium, copper, arsenic, PCP and other significant

10 contaminants, if any;

11 (c) Water quality hydrographs for all monitored wells
12 for chromium, copper, arsenic and PCP;

13 (d) Data tables for each well monitored listing
14 current and historical concentrations of total chromium,
15 hexavalent chromium, copper, arsenic and PCP; and

16 (e) Laboratory reports.

17 10. Respondents shall submit an Annual Report summarizing
18 groundwater monitoring data for the previous year. This Annual
19 Report shall be combined with the December Quarterly Groundwater
20 Monitoring Report and, in addition to the elements required for
21 the Quarterly Report, shall contain, but not be limited to:

22 (a) Information that demonstrates that the Respondents
23 are complying with Section IX.B.7 (Quality Assurance/Quality
24 Control (QA/QC)) and the QA/QC Plans submitted pursuant to that
25 Section; and

26 (b) Data validation reports.

27 11. Respondents shall sample the soil in all areas where
28 soil has been excavated for treatment or any other reason during

Remedial Action or Operation and Maintenance, and before redeposition of treated soil in the excavated area(s). The soil samples shall be analyzed using the California WET procedure and the following EPA Methods:

<u>WASTE MATERIAL</u>	<u>EPA METHOD (SW 846)</u>
Chromium (total)	7190
Chromium (VI and total soluble)	7195
Arsenic (total)	7061
Arsenic (soluble)	7060 or 7061
Copper (total)	220.1
Copper (soluble)	220.1
Dioxin/Furan (TCDD equivalents)	8280
Pentachlorophenol (PCP)	8040

12. Respondents shall submit to EPA an Excavated Area Analysis Report for each excavation, which shall include but not be limited to the following:

(a) A scale drawing of the excavated area, including 15 feet on all sides beyond the excavation, with the location of each soil sample specifically identified;

(b) Data tables for each soil sample, listing each waste material (Section IX.A.15.) and the respective analytical results; and

(c) A Disposal Request to deposit material into the excavated area. Signature approval of the Disposal Request must be obtained from EPA's Project Coordinator or designated oversight personnel before any material can be deposited in the excavation site.

1 B. IDENTIFICATION OF AND OBLIGATIONS REGARDING DOCUMENTS

2 TO BE SUBMITTED TO EPA

3 "DELIVERABLES"

4 1. PROJECT PLAN:

5 a. Within 45 days of the effective date of this Order,
6 Respondents shall submit an overall Project Plan to the EPA for
7 the Remedial Design and Remedial Action at the Site. The Project
8 Plan shall be developed in conformance with the ROD, EPA Super-
9 fund Remedial Design and Remedial Action Guidance, (February,
10 1985, "RD/RA Guidance") and any additional guidance documents
11 provided by EPA. The Project Plan shall identify, describe and
12 schedule (consistent with Appendix 2) the tasks necessary to
13 produce or perform all the major deliverables or activities in
14 order to implement the Remedial Action, including but not limited
15 to;

- 16 1) Remedial Design Plan;
- 17 2) Remedial Design activity;
- 18 3) Sampling and Analysis Plan;
- 19 4) Data Management Plan;
- 20 5) Worker Health & Safety/Emergency Response Plan;
- 21 6) Quality Assurance/ Quality Control Plan;
- 22 7) Satisfaction of Permitting Requirements Plan ;
- 23 8) Satisfaction of Permitting Requirements;
- 24 9) Remedial Action Plan;
- 25 10) Remedial Action activity;
- 26 11) Operation & Maintenance Plan;
- 27 12) Operation & Maintenance activity;
- 28 13) Confirmation Sampling Plan, and;

14) Work Completion Report.

b. Respondents shall implement the work detailed in the Project Plan as approved by EPA. The fully approved Project Plan shall be deemed incorporated into and made an enforceable part of this Order. Noncompliance with any EPA approved reports, plans, specifications, schedules, appendices, or attachments to the Project Plan or this Order shall be considered a failure to comply with this Order and shall subject Respondents to penalties as provided in Section XXI.E (Enforcement and Reservations). All work shall be conducted in accordance with the National Contingency Plan, the RD/RA Guidance, and the requirements of the Order, including the plans, specifications and schedules contained in the Project Plan.

2. MONTHLY PROGRESS REPORTS: Respondents shall provide written progress reports to EPA on a monthly basis. These progress reports shall describe all actions taken to comply with this Order, including a description of activities commenced or completed during the reporting period, Remedial Action activities projected to be commenced or completed during the next reporting period, and any problems that have been encountered or are anticipated by Respondents in commencing or completing the Remedial Action activities. These progress reports shall be submitted to EPA by the 10th of each month for work done the preceding month and planned for the current month including sampling events. The first monthly report will be due 40 days after the effective date of this Order.

3. REMEDIAL DESIGN WORK PLAN:

a. The Remedial Design Work Plan shall identify, describe

1 and schedule all major design tasks associated with but not
2 limited to; 1) Groundwater Extraction;
3 2) Groundwater Treatment;
4 3) Groundwater effluent use;
5 4) Soil Excavation, Treatment, and Placement;
6 5) RCRA Cap Placement.

7 b. CONCEPTUAL DESIGN: In the Remedial Design Work Plan the
8 Respondents shall identify, describe and schedule the submittal
9 of a conceptual design at the 30% completion point. The Concep-
10 tual Design shall include but is not limited to:

- 11 1) No less than 30% total design plans and
12 specifications;
- 13 2) Design basis assumptions;
- 14 3) Compliance with cleanup standards, State and
15 Federal ARARS and Land Disposal Restrictions;
- 16 4) Monitoring well locations and screen intervals;
- 17 5) Extraction well locations, screen intervals and
18 estimated extraction rates;
- 19 6) Site plan including but not limited to layouts
20 of all piping and all treatment, storage, disposal
21 and ancillary equipment;
- 22 7) Piping and flow diagrams for treatment units;
- 23 8) Sampling and Analysis Plan;
- 24 9) Worker Health and Safety/Emergency Response
25 Plan;
- 26 10) Quality Assurance/ Quality Control Plan;

27 c. PREFINAL/FINAL DESIGN: Respondents shall submit the
28 final design in two parts as follows:

- 1) A PREFINAL DESIGN which shall be at 90% completion of the design and shall include but not be limited to revisions of and additions to the conceptual design, all drawings, plans, specifications, schedules and cost estimates.
- 2) THE FINAL DESIGN shall include but not be limited to all revisions of and additions to the prefinal (90%) design.

4. SAMPLING AND ANALYSIS PLAN:

a. Respondents shall submit a Sampling and Analysis Plan for the sampling of groundwater. The Sampling and Analysis Plan shall be consistent with the Data Management Plan set forth in this Section and shall include but not be limited to, the following:

- 1) Sampling locations;
- 2) Sampling procedures;
- 3) Number of samples, duplicates and blanks to be selected;
- 4) Identification of laboratories to which samples will be sent;
- 5) A schedule for routine monitoring of groundwater for the contaminated aquifer(s).

b. Respondents shall submit a Sampling and Analysis Plan for the sampling and analysis of soil. The sampling plan shall include but not be limited to the following:

- 1) Sampling procedures to be used during soil remediation to insure complete cleanup of contaminants to cleanup standards;

2) Identification of laboratories to which samples will be sent for analysis.

3) A schedule for routine monitoring of the treated and untreated soil during soil remediation.

5. DATA MANAGEMENT PLAN: Respondents shall submit a Data Management Plan (DMP) which describes the proposed data collection program, data storage requirements and reporting procedures for supplying performance information on the remediation activities to EPA. The Plan will include, but not be limited to:

a. Identification of the types of data gathered for assessing the performance of the treatment units, both for soil and for groundwater.

b. The location and media for storing the data;

c. The format for providing the data to EPA;

d. A schedule for data reporting to EPA.

6. WORKER HEALTH AND SAFETY/EMERGENCY RESPONSE PLAN: The Worker Health and Safety Plan that the Respondents shall submit shall be prepared in conformance with applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to OSHA regulations for Hazardous Waste Operations found at 29 C.F.R. § 1910.120. The Emergency Response Plan that the Respondents will submit shall address both workers at the Site and public exposure to releases or spills at and from the Site, including but not limited to a plan for air monitoring during any soil excavation, treatment and replacement activity.

7. QUALITY ASSURANCE/QUALITY CONTROL PLAN: Respondents shall provide a Quality Assurance/Quality Control Plan which shall

1 include, but not be limited to, the following:

2 a. Groundwater

3 1) a discussion of the elements necessary for the
4 implementation of the trial test(s) of the pumping and
5 treatment system(s);

6 2) a description of the mechanism used to verify that
7 the extraction and treatment process is operating
8 within acceptable limits;

9 b. Soil

10 1) a discussion of the elements necessary for the
11 implementation of any pilot soil fixation and
12 stabilization tests;

13 2) a description of the plan for routine verification
14 that the soil fixation and solidification treatment
15 process is operating within the required limits;

16 c. The Quality Assurance/Quality Control Plan shall, where
17 applicable, be prepared in accordance with current EPA guidance,
18 Interim Guidelines and specifications for Preparing Quality
19 Assurance Project Plans, QAMS-005/80, and EPA's Region IX
20 Guidance For Preparing Quality Assurance Project Plans for Super-
21 fund Remedial Projects, 9 QA-03-89 (Sept. 1989). Upon approval
22 and notice by EPA to the Respondents, Respondents shall implement
23 the Plan.

24 d. Respondents shall use QA/QC procedures in accordance
25 with the QA/QC plans submitted pursuant to this Order, and shall
26 utilize standard EPA chain of custody procedures, as documented
27 in the National Enforcement Investigations Center Policies and
28 Procedures Manual, as revised in 1986, and amendments thereto,

1 and the National Enforcement Investigations Center Manual for the
2 Evidence Audit, published in September 1981 and amendments
3 thereto, for all sample collection and analysis activities, un-
4 less other procedures are approved by EPA. In order to provide
5 quality assurance and maintain quality control regarding all
6 samples collected pursuant to this Order, the Respondents shall,
7 at a minimum, ensure that the following QA/QC measures are
8 employed at laboratories utilized for analysis:

9 1) All contracts with laboratories utilized by Respon-
10 dents for analysis of samples taken pursuant to this
11 Order shall provide for access of EPA personnel and EPA
12 authorized representatives to assure the accuracy of
13 laboratory results related to the SPT Site.

14 2) Any laboratory utilized by Respondents for analysis
15 of samples taken pursuant to this Order shall perform
16 all analyses according to EPA methods as documented in
17 the Contract Lab Program Statement of Work for Inor-
18 ganic Analysis and the Contract Lab Program Statement
19 of Work for Organic Analysis dated July 1985, or
20 methods deemed satisfactory to EPA, and submit all
21 protocols to be used for analysis to EPA in the plans
22 and documents required under this Order.

23 3) All laboratories utilized by Respondents for
24 analysis of samples taken pursuant to this Order shall
25 participate in an EPA or EPA equivalent QA/QC program.
26 As part of the QA/QC program and upon request by EPA,
27 such laboratories shall perform at Respondents' expense
28 analyses of samples provided by EPA to demonstrate the

1 quality of each laboratory's data.

2 e. Respondents shall submit a Quality Assurance Status
3 Report to EPA as part of the monthly report for the months of
4 December, March, June, and September each year. This report
5 shall contain information that demonstrates that the Respondents
6 are complying with this Section and the QA/QC Plans submitted
7 pursuant to this Order.

8 f. Notwithstanding any provision of the Order, the United
9 States retains all of its information gathering, inspection and
10 enforcement authorities and rights under CERCLA, RCRA and any
11 other applicable statutes or regulations.

12 8. REMEDIAL ACTION PLAN:

13 a. Respondents shall submit a Remedial Action Plan which
14 shall include, but not be limited to identification, description
15 and schedules for all activities and tasks necessary for
16 construction of the remedy as set forth in the approved design
17 plans and specifications.

18 b. The Remedial Action Plan shall include but not be limited
19 to the plans and schedules for the following:

- 20 1) Construction of all wells, treatment facilities,
21 excavations or any other construction necessary for the
22 implementation of the remedial action;
23 2) Project organization and responsibilities;
24 3) Construction necessary to implement equipment
25 decontamination procedures;
26 4) Plans for the disposal of contaminated or poten-
27 tially contaminated material.

28 c. In the Remedial Action Plan Respondents shall include an

1 OPERATIONS AND MAINTENANCE (O&M) PLAN which documents how the
2 treatment units will be operated and maintained in order to en-
3 sure the effectiveness of the Remedial Action. The O&M Plan
4 shall conform to the plans, specifications, design conditions and
5 other stipulations set forth in the Remedial Design Plan and this
6 Order and shall include, but not be limited to the following:

- 7 1) The frequency of water level measurements and water
8 quality testing for extraction and monitoring wells;
- 9 2) The criteria for shutting down specific extraction
10 wells;
- 11 3) The frequency for testing and monitoring water emis-
12 sions from the treatment units;
- 13 4) Project organization and responsibility for both
14 soil and water treatment;
- 15 5) Equipment decontamination procedures for both soil
16 and water treatment;
- 17 6) An operations and maintenance schedule for soil and
18 water treatment;
- 19 7) The criteria for reactivating the pumping and treat-
20 ment system upon exceedence of cleanup standards.

21 9. CONFIRMATION SAMPLING PLAN: Respondents shall prepare a
22 confirmatory sampling plan which describes what sampling will be
23 completed to verify that clean-up standards have been achieved
24 for both soil and groundwater.

25 10. WORK COMPLETION REPORT: Respondents shall submit a Work
26 Completion Report by a registered Professional engineer and
27 Respondents Project Manager certifying that the Clean-up and
28 Performance Standards set forth in this Order and in the ROD have

1 been achieved and a demonstration that all other work is com-
2 pleted and the requirements of the Order have been met.

3 11. Respondents shall, pursuant to the schedule attached to
4 this Order as Appendix 2, submit a draft and a final of each of
5 the above Deliverables (except the monthly report). Any failure
6 of Respondents to submit a deliverable in compliance with the
7 schedule will be deemed a violation of this Order.

8 12. After review of any deliverable, plan, report or other
9 item which is required to be submitted for review and approval
10 pursuant to this Order, EPA may: (a) approve the submission; (b)
11 approve the submission with modifications; (c) disapprove the
12 submission and direct Respondents to re-submit the document after
13 incorporating EPA's comments; or (d) disapprove the submission
14 and assume responsibility for performing all or any part of the
15 response action. As used in this Order, the terms "approval by
16 EPA", "EPA approval" or a similar term means the action described
17 in subparagraphs (a) or (b) of this paragraph.

18 13. In the event of approval or approval with modifications
19 by EPA, Respondents shall proceed to take any action required by
20 the deliverable, plan, report, or other item, as approved or
21 modified by EPA.

22 14. Upon receipt of a notice of disapproval or a request for
23 a modification, Respondents shall, within fourteen (14) days or
24 such longer time as specified by EPA in its notice of disapproval
25 or request for modification, correct the deficiencies and
26 resubmit the deliverable, plan report or other item for approval.
27 Notwithstanding the notice of disapproval, or approval with
28 modifications, Respondents shall proceed, at the direction of

1 EPA, to take any action required by any non-deficient portion of
2 the submission.

3 15. If any submission is not approved by EPA, Respondents
4 shall be deemed to be in violation of this Order.

5 16. Neither the Project Plan approval nor any approvals,
6 permits or other permissions which may be granted by EPA related
7 to this Order constitute a warranty or representation of any kind
8 by EPA that the Project Plan will achieve the Standards set forth
9 in the ROD, and in Paragraph 17 below and shall not foreclose EPA
10 from seeking performance of all terms and conditions of this
11 Order. Nothing in this Order shall be construed to relieve
12 Respondents of their obligation to achieve all Clean-up Standards
13 and Performance Standards set forth in the ROD and in Paragraph
14 17 below. Following termination of this Order, if post-
15 termination monitoring indicates that the groundwater Clean-up
16 Standards are being exceeded, Respondents shall recommence
17 treatment of the groundwater until the Clean-up Standards have
18 been achieved.

19 17. Respondents shall meet all Clean-up Standards and
20 Performance Standards identified in the ROD with respect to the
21 Remedial Action at the Site, including, but not limited to, the
22 following:

23 a. Treatment of Groundwater

24 Groundwater on-site shall be treated to meet all Clean-up
25 Standards specified in each of the subparagraphs below. "On-
26 site" shall mean the areal extent of contamination and all areas
27 in close proximity to the contamination necessary for
28 implementation of the Remedial Action.

(1) All State of California MCLs established under the California Administrative Code, Title 22, Division 4, and set forth at the California Administrative Code, Title 22, Division 4, Sections 64435 - 64445.1 and/or State Action Levels established under the authority of the California Health and Safety Code, Chapter 6.5, Sections 25150 and 25159; Chapter 6.6, Section 25187(a); and Chapter 6.8, Sections 25355.5 and 25356.1(c).

Clean-up standards based on subparagraphs (1) above include but are not limited to the following:

Arsenic	50	ppb
Chromium	50	ppb
Pentachlorophenol (PCP)	2.2	ppb

b. Treatment of Soils

Soil on-site (as defined in paragraph 16(a) above) shall be treated to meet all Clean-Up Standards as identified in the ROD and as specified below.

All soil containing Waste Materials in excess of the Clean-up Standards shall be excavated and treated in accordance with but not limited to the ROD, RCRA Hazardous and Solid Waste Amendments of 1984 Title 40 CFR Subtitle C, and this Order. Clean-up Standards for soil include, but are not limited to, the following:

Clean-up Standards

Arsenic (total)	50	ppm
Arsenic - (soluble)	5	ppm
Chromium - (total)	3,910	ppm
Chromium - (VI)	0.5	ppm

1 Dioxin/Furan in tetrachlorinated 1 ppb
dibenzodioxin equivalents (TCDD)

2 Pentachlorophenol (Total) 17 ppm
3 (Soluble) 300 ppb

4 18. In the event EPA determines that the Respondents have
5 failed to implement the Remedial Action or any portions thereof
6 in a timely or adequate manner, the EPA or its designate may per-
7 form such portions of the Remedial Action as EPA determines may
8 be necessary. If the EPA performs all or portions of the
9 Remedial Action because of the Respondents' failure to comply
10 with its obligations under this Order, the Respondents shall be
11 liable to EPA for the costs of doing such work, plus penalties as
12 set forth in Section XXI.E (Enforcement and Reservations
13 Stipulated Penalties).

14 19. All documents submitted to EPA for approval made pur-
15 suant to this Order shall be sent by overnight mail or some
16 equivalent delivery service.

17 20. Within thirty (30) days after Respondents conclude that
18 the Remedial Action has been fully performed, Respondents shall
19 so notify EPA and shall schedule and conduct a pre-certification
20 inspection to be attended by Respondents and EPA. Within thirty
21 (30) days of the pre-certification inspection Respondents shall
22 submit a Work Completion Report as set forth in Section IX.B.10.
23 If, after completion of the pre-certification inspection and
24 receipt and review of the Work Completion Report, EPA determines
25 that the Remedial Action or any portion thereof has not been
26 completed in accordance with this Order, EPA shall notify
27 Respondents in writing of the activities that must be undertaken
28 to complete the Remedial Action and shall set forth in the notice

1 a schedule for performance of such activities. Respondents shall
2 perform all activities described in the notice in accordance with
3 the specifications and schedules established therein. If EPA
4 concludes, following the initial or any subsequent certification
5 of completion by Respondents that the Remedial Action has been
6 fully performed in accordance with this Order, EPA may notify
7 Respondents that the Remedial Action has been fully performed.
8 EPA's notification shall be based on present knowledge and
9 Respondent's certification to EPA, and shall not limit EPA's
10 right to perform periodic reviews pursuant to Section 121(c) of
11 CERCLA, 42 U.S.C. § 9621(c), or to take or require any action
12 that in the judgment of EPA is appropriate at the Site, in accor-
13 dance with 42 U.S.C. §§ 9604, 9606, or 9607.

14 21. Within thirty (30) days after Respondents conclude that
15 all phases of the Work have been fully performed, that the
16 Performance Standards have been attained, and that all Operation
17 and Maintenance activities have been completed, Respondents shall
18 submit to EPA a Work Completion Report certifying that the Work
19 has been completed in full satisfaction of the requirements of
20 this Order. EPA shall require such additional activities as may
21 be necessary to complete the Work or EPA may, based upon present
22 knowledge and Respondents' certification to EPA, issue written
23 notification to Respondents that the Work has been completed, as
24 appropriate, in accordance with the procedures set forth in
25 Paragraph 20 of this Section for Respondents' certification of
26 completion of the Remedial Action. EPA's notification shall not
27 limit EPA's right to perform periodic reviews pursuant to Section
28 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any

1 action that in the judgment of EPA is appropriate at the Site, in
2 accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

3 X. ADDITIONAL WORK

4 A. In the event that EPA or the Respondents determine that
5 additional response work is necessary to protect human health and
6 the environment, to carry out the remedy described in the ROD or
7 to meet the Performance or Clean-up Standards described in the
8 ROD, or in Section IX (Work To Be Performed) of this Order,
9 Respondents shall implement such additional work. Notification
10 of any additional work will be provided to the Project Coor-
11 dinator.

12 B. Unless otherwise stated by EPA, within 30 days of
13 receipt of notice by EPA that additional work is necessary pur-
14 suant to this Section, the Respondents shall submit a work plan
15 as specified by EPA. The plan shall conform to the requirements
16 in Section VII (Work To Be Performed).

17 C. Any additional work determined to be necessary by
18 Respondents is subject to approval by EPA.

19 D. Any additional work determined to be necessary by
20 Respondents and approved by EPA, or determined to be necessary by
21 EPA to protect human health and the environment, to carry out the
22 remedy described in the ROD or to meet the Performance or Clean-
23 up Standards, shall be completed by Respondents in accordance
24 with the standards, specifications, and schedules approved by
25 EPA.

26 E. If EPA disapproves the plan pursuant to the provisions
27 of Section VII (Work To Be Performed), within 14 days of such
28 disapproval, Respondents, consistent with Section VII (Work to Be

1 Performed), shall submit a modified plan.

2 F. Respondents shall promptly implement the plan as
3 approved or modified by EPA.

4 XI. EPA PERIODIC REVIEW

5 Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any
6 applicable regulations, EPA may review the Site to assure that
7 the Work performed pursuant to this Order adequately protects
8 human health and the environment. Until such time as EPA cer-
9 tifies completion of the Work, Respondents shall conduct the
10 requisite studies, investigations, or other response actions as
11 determined necessary by EPA in order to permit EPA to conduct the
12 review under Section 121(c) of CERCLA. As a result of any review
13 performed under this paragraph, Respondents may be required to
14 perform additional Work or to modify Work previously performed.

15 XII. ENDANGERMENT AND EMERGENCY RESPONSE

16 A. In the event of any action or occurrence during the
17 performance of the Work which causes or threatens to cause a
18 release of a hazardous substance or which may present an
19 immediate threat to public health or welfare or the environment,
20 Respondents shall immediately take all appropriate action to
21 prevent, abate, or minimize the threat, and shall immediately
22 notify EPA's Remedial Project Manager (RPM). If the RPM is
23 unavailable Respondents shall notify the EPA Emergency Response
24 Unit, Region 9. Respondents shall take such action in
25 consultation with EPA's RPM and in accordance with all applicable
26 provisions of this Order, including but not limited to the Health
27 and Safety Plan and the Contingency Plan. In the event that
28 Respondents fail to take appropriate response action as required

1 by this Section, and EPA takes that action instead, Respondents
2 shall be liable to EPA for all costs of the response action not
3 inconsistent with the NCP.

4 B. Nothing in the preceding paragraph shall be deemed to
5 limit any authority of the United States to take, direct, or or-
6 der all appropriate action to protect human health and the en-
7 vironment or to prevent, abate, or minimize an actual or
8 threatened release of hazardous substances on, at, or from the
9 Site.

10 XIII. COMPLIANCE WITH APPLICABLE LAWS

11 A. All activities conducted by Respondents pursuant to this
12 Order shall be performed in accordance with the requirements of
13 all Federal and state laws and regulations. EPA has determined
14 that the activities contemplated by this Order are consistent
15 with the National Contingency Plan (NCP).

16 B. Except as provided in Section 121(e) of CERCLA and the
17 NCP, no permit shall be required for any portion of the Work
18 conducted entirely on-Site; however, Respondents shall meet all
19 substantive requirements of ARARs as set forth in the ROD. Where
20 any portion of the Work requires a Federal or state permit or
21 approval, Respondents shall submit timely applications and take
22 all other actions necessary to obtain and to comply with all such
23 permits or approvals.

24 C. This Order is not, and shall not be construed to be, a
25 permit issued pursuant to any Federal or state statute or
26 regulation.

27 XIV. REMEDIAL PROJECT MANAGER

28 A. All communications, whether written or oral, from

1 Respondents to EPA shall be directed to EPA's Remedial Project
2 Manager. Respondents shall submit to EPA three copies of all
3 deliverables, documents, including plans, reports, and other
4 correspondence, which are developed pursuant to this Order, and
5 shall send these documents by overnight mail.

6 EPA's Remedial Project Manager is:

7 David E. Roberts
8 EPA H-6-2
9 75 Hawthorne
10 San Francisco, CA 94115

11 C. EPA's RPM shall have the authority lawfully vested in a
12 Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by
13 the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM
14 shall have authority, consistent with the National Contingency
15 Plan, to halt any work required by this Order, and to take any
16 necessary response action.

17 XV. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

18 A. To the extent that the Site or other areas where work is
19 to be performed is presently owned or controlled by parties other
20 than those bound by this Order and to the extent that access to
21 or easements over property is required for the proper and com-
22 plete performance of this Order, Respondents shall obtain access
23 agreements from the present owners or those persons who have
24 control over the property, including lessees, within sixty (60)
25 days of the effective date of this Order. Site access agreements
26 shall provide access to EPA, its contractors and representatives,
27 and to Respondents and their Contractor(s) and authorized
28 representatives, and such agreements shall specify that
Respondents are not EPA's representatives with respect to

1 liability associated with Site activities.

2 B. Respondents shall save and hold harmless the United
3 States and its officials, agents, employees, contractors,
4 subcontractors, or representatives for or from any and all claims
5 or causes of action or other costs incurred by the United States
6 including but not limited to attorneys fees and other expenses of
7 litigation and settlement arising from or on account of acts or
8 omissions of Respondents, their officers, directors, employees,
9 agents, contractors, subcontractors, and any persons acting on
10 their behalf or under their control, in carrying out activities
11 pursuant to this Order.

12 C. In the event that site access agreements are not ob-
13 tained within the sixty (60) day period, Respondents shall notify
14 EPA within sixty five (65) days of the effective date of this
15 Order regarding both the lack of, and efforts to obtain, such
16 agreements. If Respondents fail to gain access within 60 days,
17 they shall continue to use best efforts to obtain access until
18 access is granted. For purposes of this paragraph, "best ef-
19 forts" includes but is not limited to, seeking judicial assis-
20 tance and the payment of money as consideration for access.

21 D. Respondents Gerald Petery and Selma Leasing Company and
22 their agents or representatives shall allow EPA and its
23 authorized representatives and contractors to enter and freely
24 move about all property at the Site and off-Site areas subject to
25 or affected by the work under this Order or where documents re-
26 quired to be prepared or maintained by this Order are located,
27 for the purposes of inspecting conditions, activities, the
28 results of activities, records, operating logs, and contracts re-

1 | lated to the Site or Respondents and its representatives or
2 | contractors pursuant to this Order; reviewing the progress of the
3 | Respondents in carrying out the terms of this Order; conducting
4 | tests as EPA or its authorized representatives or contractors
5 | deem necessary; using a camera, sound recording device or other
6 | documentary type equipment; and verifying the data submitted to
7 | EPA by Respondents. Respondents shall allow EPA and its
8 | authorized representatives to enter the Site, to inspect and copy
9 | all records, files, photographs, documents, sampling and
10 | monitoring data, and other writings related to work undertaken in
11 | carrying out this Order. Nothing herein shall be interpreted as
12 | limiting or affecting EPA's right of entry or inspection
13 | authority under Federal law.

14 | E. Respondents may assert a claim of business
15 | confidentiality covering part or all of the information submitted
16 | to EPA pursuant to the terms of this Order under 40 C.F.R.
17 | § 2.203, provided such claim is not inconsistent with Section
18 | 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions
19 | of law. This claim shall be asserted in the manner described by
20 | 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time
21 | the claim is made. Information determined to be confidential by
22 | EPA will be given the protection specified in 40 C.F.R. Part 2.
23 | If no such claim accompanies the information when it is submitted
24 | to EPA, it may be made available to the public by EPA or the
25 | state without further notice to the Respondents. Respondents
26 | shall not assert confidentiality claims with respect to any data
27 | related to Site conditions, sampling, or monitoring.

28 | F. Respondents shall maintain for the period during which

1 this Order is in effect, an index of documents that Respondents
2 claim contain confidential business information. The index shall
3 contain, for each document, the date, author, addressee, and
4 subject of the document. Upon written request from EPA,
5 Respondents shall submit a copy of the index to EPA.

6 G. Any person obtaining access to the Site pursuant to this
7 provision shall comply with all applicable provisions of the
8 Worker Health and Safety Plan as submitted pursuant to Section
9 VII.B.6 (Worker Health and Safety Plan).

10 H. Notwithstanding any provision of this Order, the United
11 States retains all of its access authorities and rights under
12 CERCLA, RCRA and any other applicable federal statute or
13 authority.

14 I. Respondents shall provide to EPA upon request, copies of
15 all documents and information within their possession and/or
16 control or that of their contractors or agents relating to
17 activities at the Site or to the implementation of this Order,
18 including but not limited to sampling, analysis, chain of custody
19 records, manifests, trucking logs, receipts, reports, sample
20 traffic routing, correspondence, or other documents or
21 information related to the Work. Respondents shall also make
22 available to EPA for purposes of investigation, information
23 gathering, or testimony, their employees, agents, or
24 representatives with knowledge of relevant facts concerning the
25 performance of the Work.

26 XVI. RECORD PRESERVATION

27 A. Until ten (10) years after EPA provides notice to
28 Respondents that the Work has been completed pursuant to Section

1 IX.B.21, each Respondent shall preserve and retain all records
2 and documents in its possession or control, including the docu-
3 ments in the possession or control of their contractors and
4 agents on and after the effective date of this Order that relate
5 in any manner to the Site. At the conclusion of this document
6 retention period, Respondents shall notify the United States at
7 least ninety (90) calendar days prior to the destruction of any
8 such records or documents, and upon request by the United States,
9 Respondents shall deliver any such records or documents to EPA.

10 B. Until ten (10) years after EPA provides notice to
11 Respondents that the Work has been completed pursuant to Section
12 IX.B.21 of this Order, Respondents shall preserve, and shall
13 instruct their contractors and agents to preserve, all documents,
14 records, and information of whatever kind, nature or description
15 relating to the performance of the Work. Upon the conclusion of
16 this document retention period, Respondents shall notify the
17 United States at least ninety (90) days prior to the destruction
18 of any such records, documents or information, and, upon request
19 of the United States, Respondents shall deliver all such
20 documents, records and information to EPA.

21 C. Within 10 days after the effective date of this Order,
22 Respondents shall submit a written certification to EPA's RPM
23 that they have not altered, mutilated, discarded, destroyed or
24 otherwise disposed of any records, documents or other information
25 relating to their potential liability with regard to the Site
26 since notification of potential liability by the United States or
27 the State or the filing of suit against it regarding the Site.
28 Respondents shall not dispose of any such documents without prior

1 approval by EPA. Respondents shall, upon EPA's request and at no
2 cost to EPA, deliver the documents or copies of the documents to
3 EPA.

4 XVII. DELAY IN PERFORMANCE

5 A. Any delay in performance of this Order that, in EPA's
6 judgment, is not properly justified by Respondents under the
7 terms of this Section shall be considered a violation of this Or-
8 der. Any delay in performance of this Order shall not affect
9 Respondents obligations to fully perform all obligations under
10 the terms and conditions of this Order.

11 B. Respondents shall notify EPA of any delay or anticipated
12 delay in performing any requirement of this Order. Such
13 notification shall be made by telephone to EPA's RPM within forty
14 eight (48) hours after Respondents first knew or should have
15 known that a delay might occur. Respondents shall adopt all
16 reasonable measures to avoid or minimize any such delay. Within
17 five (5) business days after notifying EPA by telephone,
18 Respondents shall provide written notification fully describing
19 the nature of the delay, any justification for delay, any reason
20 why Respondents should not be held strictly accountable for
21 failing to comply with any relevant requirements of this Order,
22 the measures planned and taken to minimize the delay, and a
23 schedule for implementing the measures that will be taken to
24 mitigate the effect of the delay. Increased costs or expenses
25 associated with implementation of the activities called for in
26 this Order is not a justification for any delay in performance.

27 XVIII. ASSURANCE OF ABILITY TO COMPLETE WORK

28 A. Respondents shall demonstrate their ability to complete

1 the Work required by this Order and to pay all claims that arise
2 from the performance of the Work by obtaining and presenting to
3 EPA within thirty (30) days after approval of the RD Work Plan,
4 one of the following: (1) a performance bond; (2) a letter of
5 credit; (3) a guarantee by a third party; or (4) internal
6 financial information to allow EPA to determine that Respondents
7 have sufficient assets available to perform the Work.

8 Respondents shall demonstrate financial assurance in an amount no
9 less than the estimate of cost for the remedial design and
10 remedial action contained in the Record of Decision for the Site.
11 If Respondents seek to demonstrate ability to complete the
12 remedial action by means of internal financial information, or by
13 guarantee of a third party, they shall re-submit such information
14 annually, on the anniversary of the effective date of this Order.
15 If EPA determines that such financial information is inadequate,
16 Respondents shall, within thirty (30) days after receipt of EPA's
17 notice of determination, obtain and present to EPA for approval
18 one of the other three forms of financial assurance listed above.

19 B. At least seven (7) days prior to commencing any work at
20 the Site pursuant to this Order, Respondents shall submit to EPA
21 a certification that Respondents or their contractors and
22 subcontractors have adequate insurance coverage or have
23 indemnification for liabilities for injuries or damages to
24 persons or property which may result from the activities to be
25 conducted by or on behalf of Respondents pursuant to this Order.
26 Respondents shall ensure that such insurance or indemnification
27 is maintained for the duration of performance of the Work
28 required by this Order.

1 IX. UNITED STATES NOT LIABLE

2 The United States, by issuance of this Order, assumes no
3 liability for any injuries or damages to persons or property
4 resulting from acts or omissions by Respondents, or their
5 directors, officers, employees, agents, representatives,
6 successors, assigns, contractors, or consultants in carrying out
7 any action or activity pursuant to this Order. Neither EPA nor
8 the United States may be deemed to be a party to any contract
9 entered into by Respondents or their directors, officers,
10 employees, agents, successors, assigns, contractors, or
11 consultants in carrying out any action or activity pursuant to
12 this Order.

13 XX. ENFORCEMENT AND RESERVATIONS

14 A. EPA reserves the right to bring an action against Respon-
15 dents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery
16 of any response costs incurred by the United States related to
17 this Order. This reservation shall include but not be limited to
18 past costs, direct costs, indirect costs, the costs of oversight,
19 the costs of compiling the cost documentation to support
20 oversight cost demand, as well as accrued interest as provided in
21 Section 107(a) of CERCLA.

22 B. Notwithstanding any other provision of this Order, at any
23 time during the response action, EPA may perform its own studies,
24 complete the response action (or any portion of the response
25 action) as provided in CERCLA and the NCP, and seek reimbursement
26 from Respondents for its costs, or seek any other appropriate
27 relief.

28 C. Nothing in this Order shall preclude EPA from taking any

1 additional enforcement actions, including modification of this
2 Order or issuance of additional Orders, and/or additional
3 remedial or removal actions as EPA may deem necessary, or from
4 requiring Respondents in the future to perform additional ac-
5 tivities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any
6 other applicable law. Respondents shall be liable under CERCLA
7 Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such
8 additional actions.

9 D. Notwithstanding any provision of this Order, the United
10 States hereby retains all of its information gathering, inspec-
11 tion and enforcement authorities and rights under CERCLA, RCRA
12 and any other applicable statutes or regulations.

13 E. Respondents shall be subject to civil penalties under
14 Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than
15 \$25,000 for each day in which Respondents willfully violate, or
16 fail or refuse to comply with this Order without sufficient
17 cause. In addition, failure to properly provide response action
18 under this Order, or any portion hereof, without sufficient
19 cause, may result in liability under Section 107(c)(3) of CERCLA,
20 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at
21 least equal to, and not more than three times the amount of any
22 costs incurred by the Fund as a result of such failure to take
23 proper action.

24 F. Nothing in this Order shall constitute or be construed as
25 a release from any claim, cause of action or demand in law or
26 equity against any person for any liability it may have arising
27 out of or relating in any way to the Site.

28 G. If a court issues an order that invalidates any provision

1 of this Order or finds that Respondents have sufficient cause not
2 to comply with one or more provisions of this Order, Respondents
3 shall remain bound to comply with all provisions of this Order
4 not invalidated by the court's order.

5 XXI. ADMINISTRATIVE RECORD

6 Upon request by EPA, Respondents must submit to EPA all
7 documents related to the selection of the response action for
8 possible inclusion in the administrative record file.

9 XXII. EFFECTIVE DATE AND COMPUTATION OF TIME

10 This Order shall be effective fifteen (15) days after the
11 Order is signed by the Director, Hazardous Waste Management
12 Division. All times for performance of ordered activities shall
13 be calculated from this effective date.

14 XXIII. OPPORTUNITY TO CONFER

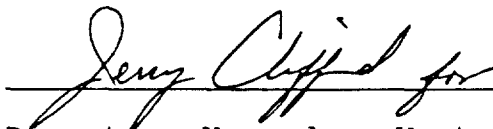
15 A. Respondents may, within ten (10) days after the date this
16 Order is signed, request a conference with EPA's Director of the
17 Hazardous Waste Management Division, or whomever the Director may
18 designate except for the Project Coordinator, to discuss this
19 Order. If requested, the conference shall occur within 14 days
20 of the request at 75 Hawthorne Street, San Francisco, California.

21 B. The purpose and scope of the conference shall be limited
22 to issues involving the implementation of the response actions
23 required by this Order and the extent to which Respondents intend
24 to comply with this Order. This conference is not an evidentiary
25 hearing, and does not constitute a proceeding to challenge this
26 Order. It does not give Respondents a right to seek review of
27 this Order, or to seek resolution of potential liability, and no
28 official stenographic record of the conference will be made. At

1 any conference held pursuant to Respondents' request, Respondents
2 may appear in person or by an attorney or other representative.

3 Requests for a conference must be by telephone followed by
4 written confirmation mailed that day to David E. Roberts, RPM,
5 (415) 744-2227, 75 Hawthorne Street, San Francisco, CA 94115.

6
7 So Ordered, this 5th day of August, 1991.

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11 BY: 
12 Director, Hazardous Waste Management Division
13 U.S. Environmental Protection Agency
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APPENDIX 2

SCHEDULE OF DELIVERABLES

DELIVERABLE:

DUE

1. Project Plan

Draft.....45 days after the effective
date of this Order

Final.....14 days after receipt
of EPA comments

Implementation.....Immediately after
EPA approval.

2. Remedial Design Plan:

Draft:60 days after EPA
approval of Project Plan

Final: 14 days after receipt
of EPA comments

Implementation:Immediately after
EPA approval.

3. Quality Assurance/Quality Control Plan:

Draft:15 days after EPA
approval of Remedial
Design Plan

Final:14 days after receipt
of EPA comments

Implementation:Immediately after
EPA approval.

4. Sampling and Analysis Plan

Draft.....14 days after EPA
approval of Remedial

1 Design Plan

2 Final.....14 days after receipt
3 of EPA comments

4 Implementation.....Immediately after
5 EPA Approval

6 5. Worker Health and Safety/Emergency Response Plan

7 Draft.....14 days after EPA
8 approval of Remedial
9 Design Plan

10 Final.....14 days after receipt
11 of EPA comments

12 Implementation.....Immediately after
13 EPA approval

14 6. Data Management Plan

15 Draft.....14 days after EPA
16 approval of Remedial
17 Design Plan

18 Final.....14 days after receipt
19 of EPA comments

20 Implementation.....Immediately after
21 EPA approval

22 7. Remedial Action Plan

23 A. Conceptual Design:

24 Draft:45 days after EPA
25 approval of Remedial
26 Design Plan

Final conceptual design:14 days after receipt
of EPA comments

B. Prefinal and Final Design:

Draft:90 days after EPA
approval of Conceptual
Design

Revised prefinal design:14 days after receipt
of EPA comments

1
2 Final Design:14 days after EPA
3 approval of Prefinal
4 Design
5 Revised Final Design.....14 days after receipt
6 of EPA comments
7 Implementation:Immediately after
8 EPA approval
9
10 8. Operations and Maintenance Plan
11
12 Draft..... 30 days after EPA
13 approval of Remedial
14 Design
15 Final.....14 days after receipt
16 of EPA comments
17 Implementation.....Immediately after
18 EPA approval
19
20 9. Confirmation Sampling Plan
21
22 Draft.....120 days after EPA
23 approval of Remedial
24 Action Plan
25 Final.....14 days after receipt
26 of EPA comments
27 Implementation.....Immediately after
28 EPA approval
29
30 10. Work Completion Report
31
32 Draft.....Within 30 days of
33 Precertification of
34 Completion Inspection
35 Final.....14 days after receipt
36 of EPA comments
37
38 Construction of the ground water treatment system should commence
39 immediately after EPA approval of the final design and should be
40 completed no later than September 30, 1991. Commencement of the
41 Remedial Action for the Soil should commence immediately after
42 EPA approval of the final design and should be completed no later
43 than March 31, 1991.